

DORIS & DONALD FISHER FUND

Grant Agreement

Grant Number: 74

1. Acceptance of Grant

The terms of the grant are deemed to be agreed to by the Grantee if the Grantee accepts any payment. No payments will be released until a signed copy of this Agreement is returned to the Grantor and acceptable evidence is provided that all conditions are or will be met.

Program Executive Contact:

Christopher D. Nelson
Managing Director
Doris & Donald Fisher Fund
1 Maritime Plaza, Suite 1550
San Francisco, California 94111
Phone: 415.733.9745
Fax: 415.433.7476

Grantee:

Teach For America
315 West 36th Street
6th floor
New York, NY 10018

Grantee Representative:

Werdy Kopp
Chief Executive Officer

Maximum Amount of Series of Grants (subject to satisfaction of conditions):

\$10,000,000.00

Date Approved: April 2009

Grant Period: January 1, 2011 – December 31, 2015

\$2M per year

Purpose of Grant: To support Teach For America's 2015 Growth Plan, and to continue Teach For America's role as a pipeline of teachers and leaders in the charter school movement, as more fully described in Attachments A and B hereto.

2. **Conditions**

Conditional Nature of Future Grants:

X || The Grantee acknowledges that this Grant Agreement is not a commitment to make a multi-year grant. This Grant Agreement represents an agreement concerning a series of separate grants which will be made over the grant period only if the conditions to the payment of each grant set forth in Sections 2 and 3 are satisfied. Unless and until the conditions for the payment of any particular grant are satisfied, Grantor shall have no obligation to make such grant.

Budget and Use of Grant Funds:

The Grantee agrees to use and apply the grant funds, as well as any interest earned thereon, exclusively for activities of Grantee consistent with its mission and purpose and the goals of the Project, as more fully set forth in Attachment 1 hereto, which is incorporated by reference.

During the grant period, the Grantor shall be consulted on major decisions involving or regarding significant changes in strategy, personnel or budget. Grantee will not use any portion of the donated funds:

- (i) To carry on propaganda, or otherwise attempt to influence legislation within the meaning of Internal Revenue Code §4945(e) or to influence the outcome for any specific election for candidates to public office or for any voter registration drive;
- (ii) To make any grant to any individual which does not comply with Internal Revenue Code §4945(d)(3) or any grant to any organization which does not comply with Internal Revenue Code §4945(d)(4);
- (iii) To induce or encourage violations of law or public policy or cause any private inurement or improper private benefit to occur; or
- (iv) To undertake any activity for any purpose other than a religious charitable, scientific, literary, educational or other purpose specified in Internal Revenue Code §170(c)(2)(B) or otherwise take any other action inconsistent with Internal Revenue Code §501(c)(3).

Required Reporting:

The Grantee shall provide the Grantor with the results of a financial audit, including a management letter, for the fiscal year or years during which these grant funds are used. The Grantee shall also provide the Grantor with reports following each fiscal year to and including the fiscal year in which the grant funds have been fully expended or returned summarizing its activities relating to the grant or grants as detailed in (a) of Section 3.

Naming:

The Grantor reserves the right to have the Grantor recognized in Grantee's materials during the grant period and for up to six months after the final grant has been made. The Grantor shall be recognized as a contributor for all fundraising and publicity events, subject to its prior approval as described in the next paragraph, during the grant period and for up to six months after the final grant has been made.

Publicity:

Press releases, programs, announcements, invitations, feature stories, materials produced as part of a grant, and any other public information shall not mention any connection with the Grantor without the prior written consent of the Grantor. Any statement about the Grantor or its staff must be cleared in advance by the Grantor.

Book and Records; Audit:

The Grantees shall maintain full and complete records of its receipts and expenditures and shall make its books and records available to the Grantor at all reasonable times. The Grantor reserves the right to conduct an audit of the Grantee during the grant period and for up to two years after the final grant has been made, if it appears appropriate and necessary to the Grantor.

Monitoring and Evaluation:

In order to assess the effectiveness of our grants, the Grantor may monitor or conduct an evaluation of the program funded by this grant, which may include visits by representatives of the Grantor to observe the Grantee's operations and to discuss the program with the Grantee's personnel. Grantee agrees to cooperate with said monitoring and evaluation during the grant period and for up to one year after the final grant has been made.

Hold Harmless:

In accepting a grant from the Grantor, the Grantee hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Grantor, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorney fees) directly, or indirectly, wholly or partly arising from or in connection with any act or omission of the Grantee, its employees or agents, in applying or accepting such grant or in carrying out the program or project to be funded or financed by such grant.

3. Payment Schedule for Grants

Grant #1: On or about December 31, 2010 Grantor shall disburse to Grantee an amount of \$2,000,000.00.

Additional Grants:

Grant #2: On or about December 31, 2011 Grantor shall disburse to Grantee an amount of \$2,000,000.00.

Grant #3: On or about December 31, 2012 Grantor shall disburse to Grantee an amount of \$2,000,000.00.

Grant #4: On or about December 31, 2013 Grantor shall disburse to Grantee an amount of \$2,000,000.00.

Grant #5: On or about December 31, 2014 Grantor shall disburse to Grantee an amount of \$2,000,000.00.

In addition to the Conditions contained in Section 2, funding of Grant #2 and any subsequent Grant (if applicable) is contingent upon the following:

(a) Promptly following the end of each fiscal year in which grant funds are disbursed, Grantee shall present to Grantor, and in no event later than thirty (30) days prior to any additional grant contemplated by the Payment Schedule above, a report containing (i) a narrative description depicting the progress of Grantee in satisfying the purposes of the Grant, including reference to Grantee's success with respect to its anticipated budget, timelines, goals and outcomes/deliverables (as more fully described in the Proposal and Metrics attached hereto as Attachments A and B); and (ii) a financial statement reflecting in reasonable detail how grant funds have been used, including all receipts and expenditures of the grant funds and the amounts of any unspent and/or uncommitted funds as of the end of the period covered by the report. Such report shall be required for each grant each year until, and including, the year in which all grant funds from that grant have been expended or returned ("the final year") and shall be satisfactory in all material respects to Grantor, in its sole discretion. If the grant funds from any grant are expended in more than one fiscal year, the report for the final year shall include all expenditure of grant funds from that grant for both the final year and all prior years. Grantee must notify Grantor in advance if it anticipates any difficulty in providing reports in a timely manner.

(b) Grantee shall present to Grantor the results of an audit of the financial statements of Grantee, including a copy of the management letter, for the fiscal year or years during which these grant funds were used, which audit and management letter are reasonably satisfactory to Grantor.

(c) Grantee shall present to Grantor evidence that Wendy Kopp remains the Chief Executive Officer of Grantee, or, if not, shall present Grantor with information sufficient for Grantor to determine, in its sole discretion, that any replacement is acceptable to Grantor.

If, as of the final date for making any grant set forth above in this Section 3, Grantee has failed to comply with the conditions to the grant in question, as determined by the Grantor in its sole discretion, then Grantor shall have no obligation to make such grant or any other remaining grants.

4. Grantee Representations: Warranties and Covenants

(a) Grantee is a tax exempt organization described in Internal Revenue Code §509(a)(1), (2) or (3) is not an organization described in Internal Revenue Code 4947(g)(4)(A) and, if other than a governmental entity described in Internal Revenue Code §170(c)(1), holds a presently outstanding Internal Revenue Service determination letter to that effect which has not expired or been revoked and is not

the subject of any investigation or proceeding which may result in termination, modification or revocation.

(b) The budget provided to you herewith correctly shows the purposes for which expenditures will be made in connection with the Project. If any amounts are budgeted in respect of the Project to be spent to attempt to influence legislation or any other purpose for which donated funds cannot be expended under this Agreement, such amounts have been separately stated. If no amounts are separately stated, none of the budgeted amounts are to be so expended.

(c) Grantee will notify Grantor immediately of any change or proposed change in (i) Grantee's tax exempt status, (ii) classification as an organization described in Internal Revenue Code §509(a)(1), (2) or (3) or Internal Revenue Code Section 4942(g)(4)(A), (iii) qualification for such classification, or (iv) Grantee's executive staff or key personnel responsible for implementing the Project.

5. Termination

Grantor may terminate this Agreement for cause upon the occurrence of any of the following:

- (a) A material default by Grantee that is not cured within 30 days after written notice.
- (b) Grantee's fraud, willful misconduct, gross negligence, or misappropriation of any funds or other property in connection with this Agreement.
- (c) Grantee's applying for or consenting to the appointment of or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; becoming insolvent; making a general assignment for the benefit of creditors; permitting the appointment of a receiver for its business or assets; becoming subject to any proceeding for protection from its creditors under any bankruptcy or insolvency law.

6. Applicable Law

This Agreement is governed by California law, excluding any choice of law rules that would apply the laws of a different state.

7. Assignment

Grantee shall not assign any part or all of this Agreement, or subcontract or delegate any of its rights under this Agreement, without Grantor's prior written consent. Any attempt to assign, subcontract or delegate in violation of this Section 7 is void in each instance.

8. Severability

If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not

present and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.

9. **No Waiver**

A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver.

10. **Cumulative Rights**

The rights and remedies of the parties under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity.

11. **Construction**

The section headings of this Agreement are for convenience only and have no interpretive value. This Agreement may be executed in counterparts, which together will constitute one and the same agreement.

12. **Joint Venture**

This Agreement does not constitute and shall not be construed as constituting a partnership, employer/employee or principal/agent relationship nor joint venture between Grantor and Grantee. Neither party shall have the right or authority to obligate or bind the other party in any manner whatsoever, except as provided in this Agreement. In performing each of their obligations pursuant to this Agreement, each party is an independent contractor.

13. **Limitations on Liability**

Neither party to this Agreement shall be liable under any circumstances for lost opportunities or profits, or for consequential, special, punitive or indirect damages of any kind.